IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2589 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not?[Except bracketted portion] :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARANSINH FATEHSINH GOHIL

Versus

COMMISSIONER OF POLICE

Appearance:

MR SAURABH MEHTA for MR YN OZA for Petitioner

MR DP JOSHI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 09/03/2001

ORAL JUDGEMENT

#. The petitioner, who at the relevant time was working as a Police Sub-Inspector, Sabarmati Police Station, Ahmedabad, has challenged in this petition an order dated 17.3.1989 passed by the Police Commissioner, Ahmedabad

City whereby the petitioner was suspended as he was involved in a serious crime punishable under sections 161, 165.A and 34 of the Indian Penal Code and section 7 read with section 12 of Prevention of Corruption Act.

#. From the order Annexure 'A' it appears that with A.C.B Police Station C.R. No. 25 of 1988 was lodged by Valjibhai Odharbhai Rebari, aged about 67 years. A copy of the First Information Report is produced at Annexure 'C'. As a complaint for a serious offence was pending, the Commissioner of Police made an order of suspension which according to the learned advocate appearing for the petitioner, is passed in an arbitrary manner, and the same is also a malafide order.

#. Reading the complaint Annexure 'C' it appears that the petitioner was working at the Sabarmati Police Station while the complainant Valjibhai Odharbhai Rebari was residing at Bhagwati Society, Chandkheda, Dist. Gandhinagar with his family members. He was serving at the relevant time in Gujarat Steel Tubes Ltd., and was also elected as a member of the Chandkheda Nagar Panchyat. He was also General Secretary of Navgujarat Kamdar Parishad. Before eight days from 11.11.1988, as stated in the complaint, a police constable conveyed to the mother of the petitioner that the petitioner is summoned by Sub-Inspector at Kaligam Police Chowky. Thinking that there may be some work, the petitioner reached Kaligam Police Chowky where he approached Police Sub Inspector Gohil, the petitioner herein. PSI Gohil conveyed that against Valjibhai and four or five other office bearers of Gujarat Steel Tubes, there is a compliant and that is required to be investigated. It is alleged in the complaint that Sub Inspector gave abuses and stated to him that he is a head-strong person and is taking the law in his hands. The complainant Valjibhai requested him to calm down and convey the true facts and the names of the persons. He was told that in the complaint names of the persons are referred, and he should call them and after recording their statements a decision will be taken as to what should be done in the matter. The petitioner was told to approach the Writer. Accordingly, he approached one Dayabhai, Writer of the PSI who was not in the police uniform at the relevant time. He took Valjibhai outside the Chowky and stated that there are serious allegations and it is advisable that the matter should be settled, otherwise it would be too late. The complainant enquired as to what are the allegations. However, he was told by the said Constable that he need not bother about the allegations, but he may settle the matter and for that purpose, he will have to

pay Rs.1,000/-. Thereupon, it was stated by the said Valjibhai that he is an ordinary labourer and he cannot bring this huge amount. Ultimately, the said Writer said that he will have to inquire from the PSI, and went to the police chowky. After some discussion with the said PSI Gohil, he came back. Ultimately, he agreed to accept Rs.650/-. The constable further stated that out of this amount, Rs.500/- will go to the PSI and Rs.150/- is his share. The said Valjibhai realised that if the amount is not paid, then not only he but also other office bearers will be harassed, and paid Rs.400/- which he had with him at the relevant time, and conveyed that the remaining amount will be paid within two to four days time.

It is further stated in the complaint that on 9.11.1988, Mohan Odhar and Natubhai Babulal Jaiswal who were also working in Gujarat Steel Tubes Ltd. were called by the police at Kaligam Police Chowky. The complainant also accompanied them. In the complaint, it is specifically stated that the Writer Dayabhai demanded the remaining amount of Rs.250/-. However, he had with him only Rs.50/- and he paid the said amount. For paying the remaining amount, he was called to remain present on 11.11.1988 at about 6.00 pm. He was further informed that PSI Gohil will also remain present at the relevant date and time. The statement of Mohan Odhar and Jaiswal were recorded as stated in the complaint. On 11.11. 1988, a complaint was lodged with the ACB and a trap was laid.

#. The Commissioner of Police, on 17.3.1989, suspended the petitioner in view of the aforesaid incident.

#. The petitioner came out with a case before the Court that mere presence of the employee at the time of trap is not sufficient to establish the case of bribe or illegal gratification. It was further contended that the complainant was indulging in illegal activities and without application of mind and without explanation, the order of suspension could not have been passed. It is further contended that a complaint was received stating that Valjibhai was exploiting labourers and on the assurance that he will provide job, he was collecting some amount. It is further alleged in the petition that the complainant had wrongfully confined the wife of Jasu Naik and the complaint for the said offence was under investigation. In ground (c) it is specifically mentioned that in the complaint it was alleged that Valjibhai had confined wife of one Jasu Naik and investigation was in progress. The said Valjibhai was

not pleased with the approach of the petitioner of taking strict measures in accordance with law, and therefore, a false case is made out against the petitioner.

#. In the instant case, the Commissioner of Police has filed an affidavit-in-reply. It is pointed out in detail about the trap laid by the ACB. In paragraph 1 of the affidavit it is pointed out about the anonymous complaint received wherein allegations were made against Valjibhai. It is specifically averred by the Commissioner that the petitioner did not record statement of the victims mentioned in the complaint, but he directly approached the said Valjibai on 29.10.1988 and called him to the police station. No action was taken with a view to ascertain the actual facts from the victims. It is pointed out that many a times, anonymous complaints are received, only with a view to malign some persons and, therefore, special care was required tobe taken. According to the Commissioner, statement of witnesses corroborating the facts was required to be recorded. It is pointed out that it is the normal practice of the police department to record the statements of the victims corroborating the fact of such incident, and calling the accused in the police station without recording any previous statement or carrying out any investigation was one of the factor which according to the deponent was considered as a prima facie presumption of the petitioner's involvement in the case of demand and acceptance of illegal gratification. The Commissioner has stated in the affidavit about the deal and the ultimate settlement which took place and about the trap that was laid on 11.11.1988. It is further pointed out by him that had the intention of the petitioner been only to get the statements recorded, he ought to have perused the matter further within 13 days if at all he was serious enough in the investigation of the case. The fact that no statement was recorded during these 13 days and the petitioner directed Valjibhai to contact his Writer, according to the Commissioner, could not mean anything else but to settle the deal. The Commissioner has further pointed out in his affidavit that the role played by a Writer in a police chowky is very limited, and he is required to record statement as per the direction of police Sub-Inspector or Police Inspector in charge of the police chowky. It is further pointed that a Writer has no other major function by which he can pressurize any person for settling the amount of illegal gratification. This aspect was also kept in his mind while passing the order of suspension along with the fact that no statement was recorded during the period of 13 days. It is further pointed out that though the offence

alleged was of a serious nature, no action was taken. The Commissioner has further stated that within a very short time when the trap was completed, the petitioner reached the place of incident, i.e. Kaligam Police Chowky. According to him, this also corroborates the statement of the said Valjibhai that Writer Mr. Dayabhai had told him that the petitioner would be present on the evening of 11.11.1988 when the last instalment of Rs.200/- was to be paid. The Commissioner has further stated in the affidavit that after the recommendation of the ACB soon after the trap, he was considering whether to place the petitioner under suspension or not. However, later on the complainant had filed a complaint before the ACB that he was receiving threats on his life from the petitioner. The Commissioner has stated that this was one of the additional factor which was required to be taken into consideration while taking a decision to place the petitioner under suspension. It is further stated by the Commissioner in his affidavit that the petitioner has levelled number of allegations against Valjibhai and has abused him without joining him as a party to this petition. The Commissioner has pointed out that a person cannot be termed as notorious or anti-social without joining him as a party to the proceedings.

#. Thus, the aforesaid aspects which were kept in the mind by the Commissioner of Police while passing the order, is required to be considered by this Court. If the order was made by the person who had no authority to suspend, the Court could have considered that aspect. In the instant case, it is the simple case of the petitioner that he was not present at the time of actual passing of the currency and the said Valjibhai was involved in other crimes. The petitioner was investigating a complaint wherein a women was wrongfully confined by the said Valjibhai and, therefore, according to the petitioner, Valjibhai had grievance against the petitioner. In view of what is stated hereinabove, it is difficult to accept the submissions made by the learned counsel appearing for the petitioner. As pointed out by the Commissioner, in the absence of any investigation whatsoever for 13 days, his presence soon after the bribe was handed over to the Writer and the threats administered to the said Valjibhai were sufficient circumstances for him to put the petitioner under suspension when he was facing such serious charges.

#. This court is not entitled to sit in appeal over the decision of disciplinary authorities. The purpose of suspension pending inquiry is generally to facilitate the

departmental enquiry and to ensure that in the course of enquiry, a public servant is not in a position to misuse his authority.

The Court is ordinarily not expected to examine correctness and propriety of the suspension order. The Court can examine whether the order of suspension was warranted by rules and also whether it was in honest exercise of powers. As pointed by the Apex Court in the case of A.K.K. NAMBIAR vs. UNION OF INDIA reported in AIR 1970 SC 652, the order of suspension has to be read in the context of the entire case and combination of circumstances. When order indicates that the authority applied its mind to the allegations and circumstances of the case, in the absence of malafide, the order requires no interference. In the case of SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPT. VS. L. SRINIVASAN reported in (1996) 3 SCC 157, the Apex Court while examining the question of quashing of suspension and charges pointed out the scope of judicial review and held that the Administrative Tribunal has committed grossest error in its exercise of judicial review. The member of the Administrative Tribunal has exercised power as if he were an appellate forum dehors the limitations of judicial review and has exceeded its power of judicial review in quashing the suspension order and charges even at the threshold. This Court would not like to sit in appeal over the order of suspension and the reasons given by the disciplinary authority like a court of first appeal. Even if two views are possible, this Court would decline to interfere.

#. In view of what is stated hereinabove, it would not be possible to say that the order of suspension is bad or illegal or contrary to the provisions of law. Therefore, the petition must fail, and is accordingly rejected. Rule is discharged. Interim relief stands vacated forthwith.

[##. Before parting with this judgment, it is required to be observed that the order of suspension came to be passed in the year 1989. The order was already executed. Learned Single Judge, at the time of admission issued notice but it seems that no reply was filed by the State/Respondents. It is in view of this fact that the learned Single Judge thought it fit to issue rule and to stay the operation of the suspension order. If the matter would have been heard at the earliest, the situation would have been different, but after Rule was issued, the matter has gone to the cold-storage, and neither the learned advocate for the petitioner nor the counsel for the State took interest in the early hearing

of the matter. Was it not the duty of the counsel for the State to request the Court after filing of the reply to take up the matter for hearing and to vacate the interim relief? A copy of this judgment be sent to the Chief Secretary and the Secretary, Legal Department so as to enable them to ask the Government Pleader to work out a method to sort out similar cases and move the Court for early hearing of such matters.]

(B.C. PATEL, J.)
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